IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.189 OF 2007
IN
NOTICE OF MOTION NO.785 OF 2007
IN
S.C.SUIT NO.804 OF 2007

Shantilal K. Somaiya & Ors. ...Appellants

Versus

Jehangir Adi Wadia & Ors. ...Respondents

Shri S.U.Kamdar, Sr counsel alongwith Shri Pratik Pawar and Lucyraj Indorkar i/by M/s.Shaunak Satpute & Co for the Appellants.
Shri Ahmed Sayyed and Amita Poojari i/by Dhru and Co for the Respondent Nos.1,3 and 5.
Shri G.S.Godbole i/by Shri Y.R. Shah for the Respondent No.10.
Shri V.A.Thorat, Sr counsel alongwith Shri R.A.Thorat i/by R.D.Thorat for the Respondent No.11.

CORAM : ABHAY S.OKA, J.
DATED : MARCH 23, 2007.

P.C.:

1. Heard the learned counsel appearing for the parties. The Appeal is preferred by the original Plaintiffs aggrieved by order dated 20th February, 2007 passed by the learned trial Judge by which the prayer for ad-interim relief made by the Appellants in a Notice of Motion for temporary injunction has been rejected.

2. The learned counsel appearing for the Appellants invited my attention to order dated 17th January, 2007

passed by this Court in Civil Application No.5213 of 2006 in First Appeal No.776 of 1991 and submitted that the prayer for ad-interim relief ought to have been considered by the learned trial Judge on its own merits and the prayer could not have been rejected only on the ground of pendency of the First Appeal in this Court.

3. Shri Thorat, learned senior counsel appearing for the original Defendant No.14 stated that a detailed reply was filed to the prayer for ad-interim relief before the trial Court which is not annexed to the Appeal compilation. He states that independently of the reasons recorded by the learned trial Judge he is willing to satisfy this Court that no case for grant of ad-interim relief was made out. Same are the submissions made by Shri Godbole appearing for the original Defendant No.13.

4. On plain reading of the impugned order it is crystal clear that the prayer made by the Appellants for grant of ad-interim relief has not been considered on merits. The learned Judge has observed in the impugned order:

> "I have gone through the record the dispute is regarding to boundary mark and matter is

adjudicature by SC bearing No.7145/68 and now the matter is subjudice by Hon’ble High Court. This is not a case were in ad-interim relief".

5. In view of the order dated 17th January, 2007 passed by this Court, the learned Judge should have considered the prayer for ad-interim relief on its own merits. The relevant part of the impugned order is quoted above. The prayer for ad-interim relief has been considered by the learned Trial Judge in most unsatisfactory manner. As the case of the Appellants is not considered by the trial Court on merits, it is desirable that prayer for ad-interim relief made by the Appellants shall be heard afresh by the learned trial Judge.

6. Hence, I pass the following order;

(i) That part of the impugned order dated 20th February, 2007 by which prayer for ad-interim relief made by the Appellants in Notice of Motion No.785 of 2007 was rejected is quashed and set aside.

(ii) The parties will appear before the learned trial Judge at 11.00 a.m on 28th March, 2007. On that

day the learned Judge will hear the parties and decide the prayer made by the Appellants for grant of ad-interim relief in Notice of Motion No.785 of 2007. The learned Judge is bound to consider reply which is already tendered by the original Defendant No.14. Any reply filed by other Defendants with prior service to the Appellants will be also considered by the learned trial Judge.

(iii) Liberty to the Appellants to file rejoinder to the reply already filed by the concerned Defendants.

(iv) All contentions of the parties on merits are kept open.

(v) The trial Court will decide the prayer for ad-interim relief without being influenced by the impugned order as well as this order passed by this Court.

(vi) Parties to act upon an authenticated copy of this order.

JUDGE